

### Remarks

On page 2 of the Office Action (Paper No. 20080314), the Examiner issued a three-way restriction requirement pursuant to 35 USC § 121 and § 372. The restriction divided the claims into "the following inventions or group of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1...":

Group I drawn to "compounds and compositions of Formula I, wherein R1 and R2=cyano, -CO2H, CO2alkyl, -CONH2, -CON(alkyl)2, -COalkyl, R3, R4, R5, R6=H, alkyl, or alkenyl and wherein R3, R4, R5, R6, cannot form a ring, Y=halogen, and X=phenyl which can be substituted with O-PO3H-, -SO3-, -OSO3-, cyclohexyl which can be substituted with O-PO3H-, or  $-(C(R^9)_2)_n-(V)_m-(C(R^9)_2)_o-(U)_p-(C(R^9)_2)_q-W$ , wherein R9=C1-C3 alkyl, V and U are independently O, N, n and o=1-6, p=0, 1, and W=

O-PO3H-, -SO3-, -OSO3-, and ; 
$$\begin{array}{c} R^{11} \\ | \\ -C(R^{10})_r - N^+ - R^{11} \\ | \\ R^{11} \end{array}$$
 where R10=H, r=1-5 and R11=H, alkyl unsubstituted or substituted with -O-SO3-, -CO2-  
 " containing claims 1-17;

Group II drawn to "compounds and compositions of Formula I that are not encompassed by Group I" containing claims 1-17; and

Group III drawn to "different compositions of Formula I limited to the scope of groups I or II" containing claims 18-21. (Id.)

In accordance with restriction practice, the subject matter of claims 1-17 as defined in accordance with Group II, are elected with traverse.

The law does not authorize the U.S. Patent Office to derive its own concept of a generic form of the claimed subject matter and require that it be carved out of existing claims. Applicants have the right under U.S. Patent law to claim their invention using the limitations they provide to delineate the invention, as long as the requirements of 35 USC § 112 are met. See *In re Weber*, 198 USPQ 328, 331 (CCPA 1978) and *In re Wolfrum and Gold*, 179 USPQ 620, 622 (CCPA 1973).

Applicants request that the intra-claim restriction requirement be withdrawn.

The Examiner also required an election of a single disclosed species if Group II is chosen. (Paper No. 20080314 at 3.) In accordance with election of species practice, we elect the species of Example 1, namely, 4-dicyanomethylene-2,6-dimethyl-1,4-dihydropyridine-N-(ethyloxy-ethyloxyphosphate ester mono sodium salt).

In addition, the Examiner required "identification of the claims encompassing the elected invention." (Id. at 6.) It is submitted that of the claims that the Examiner has identified under Group II, the following claims encompass the elected species: claims 1, 2, 4, 5, and 9-17.

Applicants request that the nonelected species be rejoined for examination in this application. MPEP § 1893.03(d) states that "[i]f an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable..., the nonelected inventions should be considered for rejoinder."

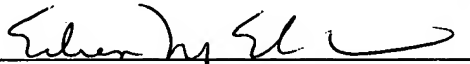
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Reply to Office Action Dated: March 25, 2008

The Examiner's early and favorable action in this application is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 25, 2008.

  
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Respectfully submitted,

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